IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7602 OF 2004

Smt.Manisha M. Gandhi .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents.

Ms.Deepa Chavan with Mr.V.M.Bhate for petitioner
Mr.V.M.Malvankar, A.G.P. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 15TH OCTOBER 2004.

ORAL JUDGEMENT (Per Dharmadhikari, J)

. Rule. Respondents waive service. By consent, rule made returnable forthwith.

1. This petition under Article 226 of the Constitution of India challenges the judgement and order of Maharashtra Administrative Tribunal, Mumbai in O.A. No.751 of 2003.

2. By the impugned order, the M.A.T. has

rejected the O.A. The O.A. was instituted by petitioner for a direction to the respondents to release her death cum retirement grauity with 10% interest. The petitioner was appointed as a cashier in Public Health Department of the State of Maharashtra. She came to be promoted and at the time of her superannuation, she was working as Office Superintendent in the office of Civil Surgeon, Ratnagiri. She was also holding additional charge of the post of Administrative Officer.

3. It appears that some time in June 1994, she effected payment of Bill No.004 and 005 of one contractor who had been awarded contract in pursuance of a tender submitted by him to the department. It is petitioner’s case that this amount was released as per the prevalent practice. Payment was duly entered by the Senior Officer and it was duly registered in the cash book. The fact of said payment is reflected in cash book. Petitioner came to be transferred as Assistant Superintendent at Rural Hospital, Sangameshwar and thereafter deputed to Civil Hospital, Ratnagiri. This was some time in July

1996.

4. In August 1996, the Superintendent Mental Hospital Ratnagiri, issued a notice to the petitioner seeking her explanation with regard to the aforesaid payment. This was in pursuance of a legal notice from the Contractor concerned. Thereafter, the said contractor filed a Special Civil Suit No.43 of 1997 which came to be later registered as Regular Civil Suit No.357 of 2000, alleging non payment of two bills being bill Nos. 004 and 005 aggregating to Rs.40,950/-.

5. Petitioner had submitted a reply to the show cause notice issued by the Medical Superintendent informing him that payment has already been made and it could be verified from the relevant record available in the office. However, the said medical superintendent replied that two receipts in respect of payment to the said contractor are missing. Petitioner clarified that stamped receipts were on record. She pointed out that during audit, the said receipts were checked and verified as well as noted by the Accountant General. On 6th February

1998, respondents filed written statement. In the written statement filed in the suit, respondent No.4 clearly and unequivocally stated that payment had been duly effected on 30th June 1994 under stamped receipt to the plaintiff contractor.

6. Petitioner was later on promoted as Office Superintendent. In November 2000, the Medical Superintendent directed the petitioner to remain present during proceedings in the suit with necessary papers. Petitioner requested the Medical Superintendent to make available records to the District Government Pleader. The deposition of Administrative Officer was recorded in the suit. He stated that payment has been made. Petitioner deposed that as per prevalent practice payment was made in cash but it has been checked and verified by Higher Authority. However, on 26th November 2001 Civil Judge, Senior Division, Ratnagiri partly decreed the suit. Appeal No. 17 of 2002 is preferred by respondents impugning the judgement and decree.

7. On 31st July 2002 petitioner retired on

superannuation as office superintendent from the office of civil surgeon Ratnagiri. As stated above, she was also holding additional charge of Administrative Officer. Petitioner's terminal benefits like final pension and gratuity have been withheld. She was paid provisional pension for six months initially as per the order of Civil Surgeon and thereafter as per the order of A.G.

8. Since the petitioner did not receive her terminal benefits she took up the matter with the authorities. She applied for copies of documents filed by respondents in the suit, which were supplied to her. After perusing the same, she noticed that there has been interpolation in the letter dated 2nd November 1997 addressed by her to respondents. This aspect was highlighted by her in letters addressed on 7th November 2002, 1st January 2003 and 20th January 2003. She pointed out that interpolation has resulted in a severe shock to her as the contents of her letter are not as set out in the copy supplied to her.

9. It appears that respondents instead of

taking action upon the aforesaid letters decided to initiate departmental enquiry against the petitioner. That action of initiating departmental enquiry coupled with denial of terminal benefits was made subject matter of O.A. No.751 of 2003 filed by petitioner in M.A.T. on 26th August 2003. It appears that the petitioner received charged sheet/ show cause notice on 19th/ 25th May 2004. She contended that respondents have no right to withhold the pension and gratuity. She pointed out that the alleged misconduct is of June 1994 whereas the charge sheet for the departmental enquiry has been issued and served in 2004. Therefore, proceedings are barred by Rule 27(2) (b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982. It is this contention which has been over-ruled and the Tribunal has passed the order rejecting the O.A. The petitioner being aggrieved and dis-satisfied by this order has instituted the instant petition.

10. Ms.Chavan, learned Counsel appearing for petitioner contended that view of the Tribunal that departmental proceedings can be

initiated at this belated stage is wholly erroneous. They are hopelessly time-barred. She submits that the view is based upon a presumption that the cause of action for the enquiry is the date of the decree of the trial court. She submits that the tribunal is in patent error while holding that respondents are entitled to initiate departmental enquiry and till conclusion of the same direction sought by the petitioner to release her terminal benefits cannot be granted. She submits that the Tribunal has misread and misconstrued the relevant rule. She submits that the tribunal ought to have appreciated that rule does not permit initiation of proceedings in case of misconduct committed prior to four years from the date of superannuation. In this behalf, she relies upon the judgement of this Court in the case of P.M.Nadguda Vs. State of Maharashtra reported in 1987 (2) B.C.R. 674.

11. On the other hand, Shri Malvankar, learned A.G.P. contends that the Tribunal's view is in accordance with law. He submits that the tribunal's view does not call for interference by this Court under Article 226 and 227 of the

Constitution of India. Consequently, the petition is liable to be dismissed.

12. Before, examining the Tribunal's interpretation of the rule, it will be necessary to notice admitted facts. Petitioner has rendered 37 years of service. Petitioner has earned promotions. Petitioner was to retire on superannuation and in fact retired on 31st July 2002. Respondents do not dispute their liability to pay terminal benefits to the petitioner in accordance with rules. They are also not disputing entitlement of petitioner thereto. However, respondents contend that on 29th August 2002, petitioner was intimated about the decision of withholding her terminal dues. It is contended that provisional pension is released so also other retirement benefits. However, it is contended by respondents that disbursement of the amount to the contractor could not be proved in the civil suit and, therefore, a decree was passed against them and in favour of the Contractor. This Judgement was delivered on 26th November 2001 and disciplinary proceedings could be initiated thereafter..

13. There is nothing to support the stand that relevant and material date for initiation of departmental proceedings is the date of decree of trial court. It is contended by respondents that entries in the voucher and the cash book have been made by the petitioner and she obtained signature in the cash book of the then drawing and disbursing officer. This contention goes contrary to the earlier stand about the date of decree being the relevant and material date. The lapse and negligence, if any, of the petitioner is of making entries without proper certification. This lapse is committed in 1994 and admittedly petitioner's explanation was sought in 1996. There is correspondence to this effect.

14. The stand of respondents is that petitioner has allegedly effected payment of bills dated 27th March 1994 and 29th March 1994. However, a letter was issued on 1st April 1995 to the contractor raising dispute about the quality of materials supplied and which letter is allegedly counter signed by petitioner. It

appears to us that, in the facts and circumstances of the present case, the lapse or omission, if any, of the petitioner dates back to this period. It is not as if the petitioner has committed these acts recently. At the most, the decree has highlighted this aspect. In the light of this factual position, we find it difficult to sustain the view of the tribunal that embargo under Rule 27 would not apply. The decision of initiating departmental enquiry is based upon the decree and according to the Tribunal this is really the starting point. We are unable to agree with this view. The decree is not the event contemplated by Rule 27(2)(b)(ii). The event is of 1994-95. The decree only awards the contractor's claim. The judgements of the trial court disbelieves the respondents version as reflected in their written statement. It records that the version is not proved in absence of relevant documents such as receipts. The event is non-maintainance of documents and not the decree. That event is admittedly beyond the period prescribed by the aforesaid rule.

15. The assertion of the petitioner before

the Tribunal in the O.A. was that she was not connected with the whole process of issuing or receiving tender or its scrutiny or allotment of work. She was concerned with events after supply of the materials under the tender. As per the practice prevalent in the cash department at Ratnagiri Mental Hospital, the tenderer was paid in cash after the bills were scrutinised, approved and sanctioned by Medical Officer. The petitioner was Assistant Superintendent and performing duties of cashier. Stamped receipts were annexed to the vouchers of payment. The dispute between the tenderer and authorities about quality of material supplied is a fact which has been specifically noted in this case, inasmuch as the petitioner herself has mentioned this in the O.A. Explanations were sought from the petitioner in 1996-97 and the suit was filed in 1997 itself. Even the stand in the written statement is referred to by us above. It is when this stand was not accepted by the trial court and decree came to be passed in favour of the supplier that respondents decided to withhold terminal dues of the petitioner. From the facts and circumstances narrated above, the view of

tribunal that the relevant date in this case would be the date of decree is totally unsustainable. There was no bar for initiating the departmental proceedings, even before or during the pendency of suit. The decree passed by the civil court, does not provide fresh cause of action for initiating the departmental proceedings.

16. The above view of the tribunal is based upon its conclusion that due to failure of petitioner to maintain record of receipts properly that they could not be produced and decree came to be passed. The Tribunal, therefore, proceeded on the basis that petitioner alone was responsible for the decree being passed or that petitioner’s inability to produce corresponding documents to substantiate entries in the cash book resulted in a adverse finding against respondents. With respect, this view does not commend to us inasmuch as the above mentioned averments of petitioner in the O.A. are supported by documents. Admittedly, her explanation was sought much prior to the decree. On the other hand, it appears to us that since

somebody has to be blamed for the decree against the respondents, departmental proceedings were instituted as an after thought.

17. Rule 27 confers right on Government to withhold or wihdraw pension. The said Rule reads as under:-

> "27. **Right of Government to withhold or withdraw pention:-**
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> (1) Government may, by order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement;

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

(2)(a) The departmental proceedings eferred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retiement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Govenment may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause

of action which arose or in respect of an event which took place, more than four years before such institution;

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2) a provisional pension as provided in rule 130 shall be sanctioned.

(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a ate exceeding one-third of the pension admissible on the date of retirement of a Government servant;

(6) For the purpose of this rule:-

> (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
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> (b) judicial proceedings shall be deemed to be instituted-
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> (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance is made, and
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> (ii) in the case of civil proceedings, on the date of presenting the plaint in the court;

It is the case of petitioner that departmental proceedings are instituted after she retired from service. Therefore, her case would come under Rule 27(2)(b). The same confers power on the

Government to institute departmental proceedings after retirement or during re-employment against the pensioner provided the conditions stipulated in clauses (i) to (iii) of this sub-rule are complied with. In the case of petitioner, the event which took place was admittedly more than four years prior to the date of institution of departmental proceedings. The words "*shall not be in respect of any event*" would necessarily contemplate acts amounting to grave misconduct or negligence during the period of pensioner's service including service rendered upon re-employment after retirement. Therefore, the term "event" means act or omission of the pensioner amounting to grave misconduct or negligence. The meaning which would further the intent of Rule makers and achieve the object and purpose of its insertion should be placed upon it. At the same time, it will have to be borne in mind that, the rule appears in pension rules and therefore due weightage will also have to be given to the intention of not depriving pensioner of his pension if lapses or acts of omission and commission on his part during his service have been condoned. Therefore, an interpretation

which will balance right of Government as also of the petitioner will have to be placed on such a provision. The interpretation of the rule cannot be in vaccum, but must take into consideration the intention and object behind it as well as factual position. In the present case, the word "event" will have to be construed in accordance with the mandate of Rule 27(1). Rule 27 will have to be read as a whole and together with the sub-rules. If it is Harmoniously and properly construed, it means that without anything further departmental proceedings are not permitted to be instituted in the case of Govenment servant after his retirement or re-employment for acts during his service tenure, if events are prior to more than four years. Government has been given a right to go back for a period of four years. If negligence or misconduct is of earlier period, for which departmental proceedings could have been initiated well in time then on superannuation they cannot be raked up pulled out soas to deprive the pensioner of his due and legitimate pensionary benefits. It is not permissible to read the Rule as is read by the Tribunal in the present case. The date of decree

is irrelevant. If the event i.e. act of omission or commission is within the period of four years, then obviously departmental proceedings could be initiated and pension withheld or withdrawn depending upon conclusion thereof. The Rule is in the nature of an exception to the normal principle in service Jurisprudence that once the relationship of Master-servant comes to an end on super-annuation or retirement, then the Master has no control over the servant. The only obligation of the employer is to release Terminal benefits. Power to withhold or withdraw them is an exception to the normal duty. Such power can be exercised only if pre-conditions in Rule 27(2)(b) are satisfied. The Tribunal has lost sight of this fundamental aspect. The employer should be vigilant and not allow the employees to get away with grave misconduct or negligence.

18. In our view, it is not possible to conclude that merely because of petitioner’s deposition or her alleged inability to produce the receipts that the suit was decreed. The remedy of appeal is availed of admittedly. The

Tribunal could ot have supported the action of issuance of the charge sheet by respondent in 2004 on the spacious plea that the departmental enquiry could not have been initiated before the decree was passed. The view of the tribunal that if the decree is set aside in appeal, petitioner can apply for quashing of charge sheet also does not commend to us. In the facts and circumstances of the present case, asking the petitioner to wait till the appeal is decided and then apply for quashing of the charge sheet is not permissible or just. Pensioner like petitioner cannot be expected to wait till the outcome of litigation against the respondents for getting her terminal benefits. Judicial notice has to be taken of the delay in court matters. Right to receive pension cannot be held in abeyance or postponed in this manner.

19. It is not even the case of the respondents that if there is any loss caused to them by the alleged acts of omission and commission of the petitioner, then they are wholly remedyless. That Rule 27 is not the only remedy available is an admitted fact. Therefore,

the view of the Tribunal that petitioner should wait till the appeal is allowed is also not sustainable in law and on facts.

20. In our view, the Tribunal committed a serious error in dismissing the O.A. In the peculiar facts and circumstances of the present case, the Tribunal should not have rejected the plea of petitioner for releasing her terminal benefits. The conclusion of the Tribunal is contrary to the materials placed on record. This is a fit case where we should exercise our writ jurisdiction and interfere with the order of the Tribunal. We proceed to do so for the reasons mentioned above.

21. In the result, petition succeeds. Rule is made absolute in terms of prayer clause (a). Respondents are directed to pay retirement benefits like permanent pension, gratuity, etc. to the petitioner with interest at the rate of Six per cent from 1st September 2002. However, this direction does not preclude the respondents from initiating such proceedings as are permissible in law against petitioner and other

employees for pecuniary loss allegedly caused to them. In the circumstances of the case, there will be no order as to costs.

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